International Brotherhood of Electrical Workers, Local 332 *and* Rudolph and Sletten and George Family Enterprises and United Brotherhood of Carpenters and Joiners of America, Local Union No. 405. Case 32–CD–198681

January 3, 2018

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE AND MCFERRAN

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). Rudolph and Sletten (R&S) filed a charge on May 12, 2017, alleging that the Respondent, International Brotherhood of Electrical Workers, Local 332 (IBEW Local 332) violated Section 8(b)(4)(D) of the Act by threatening to engage and engaging in proscribed activity with an object of forcing R&S to assign certain work to employees represented by IBEW Local 332 rather than to employees who are represented by the United Brotherhood of Carpenters and Joiners of America, Local Union No. 405 (Carpenters Local 405). A hearing was held on June 14 and 16, 2017, before Hearing Officer D. Criss Parker. Thereafter, R&S and Carpenters Local 405 filed post-hearing briefs.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[2]

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

R&S, a general building contractor, is a California corporation with its principal place of business in Redwood City, California. During 2016, R&S purchased and received materials valued in excess of $50,000 directly from points located outside the State of California. We find that R&S is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

George Family Enterprises (GFE), a general interior contractor and specialty subcontractor, is a California corporation with its principal place of business in Novato, California. Annually, GFE purchases and receives materials valued in excess of $50,000 directly from points located outside the State of California. We find that GFE is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Carpenters Local 405's collective-bargaining agreement, which clearly identifies it as a labor organization, was entered into the record, and the Board has previously found Carpenters Local 405 and IBEW Local 332 to be labor organizations under the Act.[3] We therefore find that IBEW Local 332 and Carpenters Local 405 are labor organizations within the meaning of Section 2(5) of the Act.[4]

II. THE DISPUTE

A. Background and Facts of Dispute

R&S is one of three general contractors on the Apple Campus 2 Project, with overall responsibility for improvements to the interior of the building. It subcontracted the installation of the fabric ceiling to GFE. Among other things, this work included the installation of CoolEdge LED plug and play panels (LED Panels). R&S and GFE are both signatories to the Northern California Drywall/Lathing Master Agreement, which was negotiated between the multi-employer Wall and Ceiling Alliance and United Brotherhood of Carpenters and Joiners of America. GFE exclusively used carpenters for its work on the project.

Holder Construction (Holder), another general contractor on the Apple Campus 2 Project, has overall responsibility for the core shell construction of the building. Holder subcontracted the installation of various electrical components to RE2, which employs members of IBEW Local 332.

In approximately February 2017,[5] GFE was ready to install the LED Panels. However, the work assigned to RE2 had to be finished before GFE could proceed, and RE2 has failed to complete any of that necessary precursor work.

Then, on March 22, electricians wearing RE2 apparel began removing the LED Panels from the GFE staging area without permission. While doing so, they informed the nearby GFE carpenters that they were acting under the direction of their foreman and stated, "this is our material. We're going to be getting this work. So we're just going to take it now."

In late March, Rick Solis, senior field representative for Carpenters Local 405, attended a meeting with Gerald

[1] IBEW Local 332 departed the hearing shortly after the parties agreed on the record to the work in dispute, and it did not file a post-hearing brief.

[2] Member Emanuel took no part in the consideration of this case.

[3] See, e.g., *Aztech Electric Co.*, 335 NLRB 260, 278 (2001), enfd. in relevant part 323 F.3d 1051 (D.C. Cir. 2003); *Carpenters Local 405*, 328 NLRB 788, 788 (1999).

[4] See *Ironworkers Local 550 (R.G. Smith Co.)*, 363 NLRB No. 151, slip op. at 1 fn. 2 (2016) (Sec. 2(5) status found where Board previously determined that entity was a labor organization).

[5] Unless otherwise stated, all dates refer to 2017.

Pfeiffer, IBEW Local 332's business manager. Pfeiffer claimed that GFE and Carpenters Local 405 were stealing IBEW Local 332's work. As a compromise, Pfeiffer proposed that a composite crew of both electricians and carpenters install the LED Panels—a proposal that Solis quickly rejected. Pfeiffer then yelled that this situation was "bullshit" and called the carpenters "predators," adding that they were "stealing [IBEW] work." Later in the meeting, Pfeiffer asked Solis, "you understand what you're going to do, right?" When Solis requested clarification, Pfeiffer responded, "I got 900 pissed off electricians ready to walk off the job."

Subsequently, on March 28, Pfeiffer called John Elwood, R&S's senior project executive, and left a voicemail in which he objected to the Carpenters installing the LED Panels, stating that it "needs to stop immediately."

The next day, Neil Struthers, a representative of the IBEW,[6] called John Hillegass, Apple's director of construction. Struthers stated that hundreds of electrical workers were upset that the disputed work was assigned to GFE and the Carpenters, and that the IBEW would "wobble" the job unless Apple corrected the issue.[7] As defined at the hearing, the term "wobble" encompasses any number of retaliatory job actions, including slowdowns, strikes, and walkouts.[8]

B. Work in Dispute

R&S, GFE, Carpenters Local 405, and IBEW Local 332 agreed that the work in dispute is all work associated with the unloading, packing, and installation of the illuminated and non-illuminated stretch fabric ceiling system including, but not limited to, the installation of M-13 low voltage CoolEdge LED plug and play panels at the Apple Campus 2 Project in Cupertino, California.

[6] Struthers' exact position with the IBEW was not specified in the record. However, there is uncontradicted testimony that he was an "electrical rep" calling "on behalf" of the IBEW Local 332.

[7] Neither Struthers nor Hillegass testified at the hearing. Struthers' statement was described by two witnesses. Carpenters Director of Organizing Jay Bradshaw testified that Hillegass relayed Struthers' statements to him right after the phone call ended. Elwood testified that he became aware of Struthers' statement through Martin Sisemore, president and CEO of R&S, who had discussed the statement in a meeting with Hillegass.

[8] The record contains testimony that electricians took photos of carpenters performing work and claimed that the carpenters were performing electricians' work on multiple occasions in May. The record also contains evidence that IBEW Local 332 staged walkouts on May 12 and 16. R&S argues that these actions further support its position in this case. However, IBEW Local 332 also sought other work on the Apple Campus 2 Project that had been assigned to Carpenters Local 405. Based on the record, we find that these actions were connected to those other disagreements, not the work in dispute at issue here.

C. Contentions of the Parties

R&S, GFE, and Carpenters Local 405 contend that there is reasonable cause to believe that there are competing claims for the work in dispute, that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated by IBEW Local 332's threat to induce and inducing employees to "wobble" the project unless the work in dispute was reassigned to employees represented by the IBEW Local 332, and that the parties have not agreed on a method for voluntary adjustment of the dispute.

R&S, GFE, and Carpenters Local 405 further contend that the work in dispute should be assigned to employees represented by the Carpenters Local 405 based on the factors of collective-bargaining agreements; employer preference, current assignment, and past practice; area and industry practice; relative skills; and economy and efficiency of operations.

As stated above, IBEW Local 332 departed the hearing shortly after the parties went on the record and did not file a posthearing brief. Accordingly, the contentions and evidence introduced by R&S, GFE, and Carpenters Local 405 stand unrebutted.

D. Applicability of the Statute

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work, and that a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See, e.g., *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). We find that these requirements have been met.

1. Competing claims for work

We find reasonable cause to believe that there are competing claims to the installation of the LED Panels. There is no dispute that Carpenters Local 405 was prepared to perform the work in dispute and that the work had been assigned to them by GFE. Further, there is reasonable cause to believe that IBEW Local 332 made a claim for the work in dispute, as evidenced by statements made by business manager Pfeiffer to Solis and in a voicemail for Elwood on March 28.

2. Use of proscribed means

We find reasonable cause to believe IBEW Local 332 used means proscribed under Section 8(b)(4)(D) of the Act to enforce its claim to the work in dispute. As stated

above, on March 29, Struthers, a representative of IBEW Local 332, threatened to "wobble" the worksite unless Apple reassigned the disputed work to IBEW electricians.[9] A union's threat to engage in the job actions associated with "wobbling" is sufficient to establish reasonable cause to believe that it has used proscribed means to enforce its claim. See, e.g., *Iron Workers Local 86 (Kulama Erectors)*, 264 NLRB 166, 168 (1982). And although the threat was directed at Apple rather than R&S or GFE, the Board has found that even indirect pressure on an employer to reassign work is prohibited. See *Paper Workers Local 194 (Georgia-Pacific Corp.)*, 267 NLRB 26, 28–29 (1983) (subsequent history omitted).

3. No voluntary method for adjustment of dispute

We also find no agreed-upon method for voluntary adjustment of the dispute to which all parties are bound. R&S, GFE, and Carpenters Local 405 contend that there is no such procedure in place between the parties to resolve the current work dispute. No evidence or argument was proffered to the contrary.

Based on the foregoing, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that there is no agreed-upon method for the voluntary adjustment of the dispute. We accordingly find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Board certifications and collective-bargaining agreements

R&S and GFE are subject to a collective-bargaining agreement with the Carpenters that specifically includes, among other things, installation of "all materials and component parts of all types of ceilings regardless of their material or composition." This language clearly covers the work in dispute. The agreement requires that if any work is subcontracted, it must be completed by a signatory to the agreement.

There is no evidence that GFE or R&S has a collective-bargaining agreement with IBEW Local 332 covering the work in dispute. Accordingly, we find that the factor of collective-bargaining agreements favors awarding the work in dispute to employees represented by Carpenters Local 405.

2. Employer preference, current assignment, and past practice

Paul Aherne, senior vice president of R&S, testified that both Apple and R&S prefer for the work in dispute to be done by carpenters. Laurence George, president and CEO of GFE, testified that GFE also prefers that work to be done by carpenters. In addition, Aherne and George testified that their current assignment of this work to Carpenter-represented employees is consistent with their past practices. Accordingly, we find that this factor favors awarding the work in dispute to employees represented by the Carpenters Local 405.

3. Industry and area practice

Frank E. Nunes, CEO of the Wall and Ceiling Alliance, testified that the area and industry practice is for carpenters to perform installation of low-voltage LED ceiling panels. In contrast, the record only includes evidence of one instance in which an electrician installed these types of panels. Accordingly, we find that this factor favors awarding the work in dispute to employees represented by Carpenters Local 405.

4. Relative skills

Nunes testified that employees represented by the Carpenters have the necessary skills and training to perform the work in dispute. These skills arise because the disputed work has historically been part of the carpenters' craft. Further, Nunes testified that the Carpenters host events at the international and regional level to train its members on the proper installation of technical ceiling systems, including new LED-based ceiling panels. This expertise has led to at least one situation in which a carpenter was called to resolve an issue arising from an electrician's incorrect installation of a LED Panel. George likewise testified that noncarpenters are not qualified to perform the work. On this record, we find that

[9] We emphasize that the "reasonable cause standard is substantially lower than that required to establish that the statute has in fact been violated." *Plumbers Local 562 (C&R Heating & Service Co.)*, 328 NLRB 1235, 1235 (1999). Although the only evidence of Struthers' threat is hearsay testimony, we note that there is no evidence contradicting the testimony. It is therefore sufficient to meet the reasonable cause standard. Compare *Operating Engineers Local 4 (Henley-Lungren)*, 268 NLRB 1227, 1228 (1984) (finding no reasonable cause to believe that Sec. 8(b)(4)(D) had been violated where the only evidence of proscribed means was a double hearsay statement that the purported speaker denied making).

this factor favors awarding the work in dispute to employees represented by the Carpenters Local 405.

5. Economy and efficiency of operations

Nunes testified that it is more efficient and economical to assign installation of LED Panels to carpenters. Specifically, Nunes stated that the installation of LED Panels frequently requires adjustments to the ceiling assembly, which fall within the duties of a carpenter. Nunes further stated that it is more efficient for a carpenter to do both, rather than have an electrician install the LED Panel and a carpenter adjust the ceiling assembly. Accordingly, we find that this factor favors awarding the work in dispute to employees represented by the Carpenters Local 405.

Conclusion

After considering all of the relevant factors, we conclude that employees represented by Carpenters Local 405 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements; employer preference, current assignment, and past practice; industry and area practice; relative skills; and economy and efficiency of operations. In making this determination, we award the work to employees represented by Carpenters Local 405, not to that labor organization or to its members.

Scope of Award

R&S and Carpenters Local 405 contend that a broad order covering all of R&S's and GFE's future projects in Northern California is necessary to avoid similar jurisdictional disputes in the future. We find no merit in this contention.

There are two requirements for a broad, area-wide award. First, there must be evidence that the disputed work has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur. Second, there must be evidence demonstrating that the charged party has a proclivity to engage in unlawful conduct in order to obtain work similar to the work in dispute. *Bricklayers* (*Sesco, Inc.*), 303 NLRB 401, 403 (1991).

Neither R&S nor Carpenters Local 405 introduced any testimony or evidence concerning either of these requirements. The record, here, indicates that the only other dispute between Carpenters Local 405 and IBEW Local 332 involved acoustical work, not LED Panel work. Furthermore, there is no evidence demonstrating that IBEW Local 332 has a proclivity to engage in unlawful conduct to force the reassignment of work. Accordingly, we shall limit the present determination to the particular controversy that gave rise to this proceeding.

Carpenters Local 405 further requests an order expressly barring IBEW Local 332 from "wobbling" or threatening to "wobble" any job based on any jurisdictional dispute. We find that our standard language is sufficient to resolve this dispute.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of GFE, represented by Carpenters Local 405, are entitled to perform unloading, packing, and installation of the illuminated and non-illuminated stretch fabric ceiling system including, but not limited to, the installation of M-13 low voltage CoolEdge LED plug and play panels at the Apple Campus 2 Project in Cupertino, California.

2. IBEW Local 332 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force R&S or GFE to assign the disputed work to employees represented by it.

3. Within 14 days from this date, IBEW Local 332 shall notify the Regional Director for Region 32 in writing whether it will refrain from forcing R&S and GFE, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. January 3, 2018

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Marvin E. Kaplan, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD